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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,363	10/25/2001	John Steffen	PGI6044P0221US	2326

7590 04/12/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 WEST MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661-2511

EXAMINER

LEE, RIP A

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/001,363	<b>Applicant(s)</b> STEFFEN ET AL.	
	<b>Examiner</b> Rip A. Lee	<b>Art Unit</b> 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10-25-2001</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This office action follows a response filed on January 27, 2006. Applicants have amended claims 1 and 4-7. Claims 1-7 are pending.

#### *Claim Rejections - 35 USC § 102 / 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 2, 4, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Daley *et al.* (U.S. 6,410,823).

Daley *et al.* discloses an internal wetting agent, which has been palletized, consisting essentially of 10 wt % wetting compound and 90 wt % of Rexene 1058 LDPE carrier resin (Example 1, col. 6, lines 32-35). Films containing the wetting agent were prepared in a subsequent step (col. 6, line 44).

3. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mor *et al.* (U.S. 5,969,026).

The invention of Mor *et al.* provides for a concentrate having a polymer containing a wetting agent (col. 5, line 12). Olefin types include LDPE (col. 5, line 23), and polymer formulations contain 0.1-20 wt % of surface active agent or wetting agent (col. 8, line 33). Compositions are used in manufacture of fibers or fabric, diaphragms, liners, and membranes (col. 5, lines 1-5). The amended claim language "provided in pellet form" is written in essentially product by process format, and since it has been held that the patentability of a product claim rests on the product formed, not on the method by which it was produced.<sup>†</sup> As such, the subject matter of claims 6 and 7 is fully anticipated by Mor *et al.*

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<sup>†</sup> *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

4. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Thomson (U.S. 4,490,323).

Thomson discloses a masterbatch or concentrate containing 10-30 wt %, and preferably, 10-15 wt % of wetting agent (claim 10, and col. 2, line 64). The carrier resin is low density polyethylene, *inter alia*, which are commercially available as UNIPOL polyethylenes (col. 3, lines 60-63). End products are films (col. 5, line 47). The amended claim language "provided in pellet form" is written in essentially product by process format, and since it has been held that the patentability of a product claim rests on the product formed, not on the method by which it was produced.<sup>†</sup> As such, the subject matter of claim 7 is fully anticipated by Thomson.

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones *et al.* (U.S. 3,668,172).

Jones *et al.* discloses a polyethylene concentrate composed of pigment highly dispersed in low molecular weight polyethylene (abstract). According to the inventors, the concentrate is palletized (col. 4, line 11). Use of low density polyethylene is recommended in col. 2, line 47. The concentrate will contain about 20-80 wt % of inorganic pigment, and 3-35 wt % of surfactant, based on the amount of pigment. One gleans from example 4 that titanium dioxide is a useful pigment. The end product containing the concentrate is a fiber, film, tape, ribbon, *etc.* (col. 3, line 30). The reference does not illustrate the exact composition of the instant claims, however, one of ordinary skill in the art would have found it obvious to arrive at the claimed combination because all essential features (LDPE, TiO<sub>2</sub>, wetting agent) are disclosed adequately in the patent. Furthermore, one of ordinary skill in the art would have found it obvious to make concentrate in pellet form because this process is taught by Jones *et al.*

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6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Findley (U.S. 5,176,751).

The invention of Findley relates to color concentrate pellets (abstract). Example 7 teaches a material comprising 35 wt % of carrier resin, 20 wt % of TiO<sub>2</sub>, and 15 wt % of bisstearamide wetting compound, as well as pigments. Although the table associated with example 7 shows use of 15 wt % of bisstearamide and 20 wt % of TiO<sub>2</sub>, the inventors state that the wetting compound and pigment may be used in the range of about 5-20 wt % and from about 20-50 wt %, respectively (col. 10, lines 66 and 67).

#### ***Response to Arguments***

7. The rejections of claims 1, 2, and 4 as being anticipated by Mor *et al.* and Thomson have been overcome by amendment. The rejections of claims 6 and 7 by the references still apply (*vide supra*). Claims 1-7 remain rejected over Jones *et al.* since the patent discloses pelletization.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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***Information Disclosure Statement***

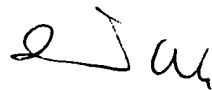
9. A signed information disclosure statement (October 25, 2001) accompanies this office action. Reference U.S. 5,573,986 was not considered; apparently the patent number has been entered incorrectly. U.S. 5,573,986 (Talmy *et al.*) relates to an electromagnetic widow; clearly the subject matter of this document does not pertain to Applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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April 5, 2006



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